

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 7, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP2141**

**Cir. Ct. No. 2012IP1**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN EX REL. THOMAS R. SOCHA,**

**PETITIONER-APPELLANT,**

**V.**

**FOREST COUNTY SHERIFF'S DEPARTMENT AND JOHN DENNEE,**

**RESPONDENTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Forest County:  
LEON D. STENZ, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve  
Judge.

¶1 PER CURIAM. Thomas Socha, pro se, appeals an order denying his request for a writ of mandamus, punitive damages, and \$100 per diem damages under the open records law, WIS. STAT. §§ 19.35 and 19.37.<sup>1</sup> We affirm.

¶2 Socha’s petition alleges he submitted written requests to the Forest County Sheriff’s Department (“the County”) for a copy of a “[t]ranscript of an interview of Charles R. Oberlin.” Socha concedes that a copy of the transcript was provided. However, Socha also claims a request for Oberlin’s handwritten statement, and “a recodes [sic] index for the investigation in to [sic] the homicide of Lance Leonard” were not provided, “nor was a response or explanation given for its withholding.”

¶3 The County submitted an answer to the petition alleging the handwritten statement and index of records pertaining to Leonard were not located or discovered, and it was unaware the documents ever existed. The circuit court subsequently denied the writ and this appeal follows.

¶4 A writ of mandamus is a discretionary action that will be affirmed unless the circuit court erroneously exercises its discretion.<sup>2</sup> See **Law Enforce. Stds. Bd. v. Village of Lyndon Station**, 101 Wis. 2d 472, 493-94, 305 N.W.2d 89 (1981) (citations omitted). It is an erroneous exercise of discretion to compel

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<sup>1</sup> Socha filed a petition for writ of mandamus, and a subsequent proposed order, entitled “ALTERNATIVE WRIT OF MANDAMUSE” [sic]. We refer to the documents collectively as a writ of mandamus. References to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

<sup>2</sup> Socha uses the phrase “abuse of discretion.” We have not used that phrase since 1992. See **Shirk v. Bowling, Inc.**, 2001 WI 36, ¶9 n.6, 242 Wis. 2d 153, 624 N.W.2d 375.

action through mandamus when the duty is not clear and unequivocal. *Id.* at 494 (quotation omitted).

¶5 The Legislature understood that factual questions arising in operation of the public records law might require judicial resolution and specifically authorized mandamus actions to enforce the public records law. *See* WIS. STAT. § 19.37(1). However, the provisions for mandamus, or costs, fees, and damages outlined in § 19.37, are triggered only once “an authority withholds a record or a part of a record or delays granting access to a record or part of a record after a written request for disclosure is made ....” *See State v. School Dist. of Sevastopol*, 146 Wis. 2d 629, 632-33, 431 N.W.2d 734 (Ct. App. 1988). After the answer is filed, a mandamus case proceeds like any other civil action and civil procedure statutes apply. *See* WIS. STAT. § 783.02.

¶6 Contrary to Socha’s improper premise, there was neither withholding nor denial of access to a record in this case. To the contrary, the County provided Socha the records that met his request. Quite simply, Socha received all the records to which he was entitled. An authority cannot deny or withhold access to that which is not in its possession. *See Sevastopol*, 146 Wis. 2d at 633.

¶7 Socha argues he was induced to believe the handwritten statement and Leonard index existed in the County’s possession by virtue of the failure to specifically respond to his request for those records. Socha claims he was thus forced into litigation, causing him to incur expenses in filing suit to compel disclosure.

¶8 Socha’s contentions in this regard are conclusory and lack any reasonable basis in fact. We shall therefore not consider the issue further. A

well-grounded basis in fact and law is a prerequisite to the commencement of any civil action. *See, e.g.*, WIS. STAT. § 802.05(2)(c). We therefore reject Socha's suggestion that he was induced to believe records existed in the possession of an authority, when in fact they did not.

¶9 The record demonstrates Socha's request for records was fully and completely met by the County. The County complied with WIS. STAT. § 19.35. The circuit court properly denied the request for mandamus.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

